

Trial Advocacy

Prof. Denitsa Mavrova Heinrich



Course:

Trial Advocacy | Law 297-01
Fall 2023
Tuesdays: 4:00 p.m. – 6:50 p.m.
Teaching Courtroom

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Office Hours:

T - Th: 2:30 – 3:30 p.m.
Can't make it to office hours? E-mail
me to schedule an appointment.

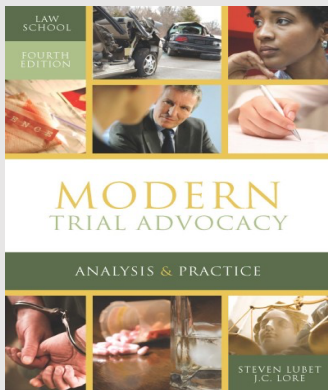
WHAT TO EXPECT IN TRIAL ADVOCACY?

The course is designed to help you develop your competence and confidence in court by building your foundational trial skills. You can expect to learn the following practical skills in Trial Advocacy:

- ✓ conduct a case analysis;
- ✓ develop and implement case theories and themes;
- ✓ identify relevant sources of evidence to prove and defend criminal and civil cases;
- ✓ conduct pretrial preparation of witnesses and documentary evidence to effectively address issues relevant to the theory of each case;
- ✓ examine both lay and expert witnesses;
- ✓ address evidentiary matters as they arise at the different stages of the trial process;
- ✓ organize factual and legal arguments to persuasively summarize evidence during opening statements and closing arguments;
- ✓ tell your client's story in a compelling manner by using effective storytelling and courtroom presentation techniques to maintain the focus and attention of the fact-finder.

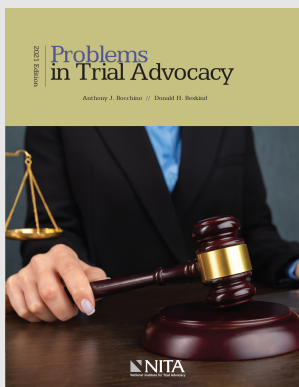
REQUIRED TEXTS

Steven Lubet & J.C. Lore, **MODERN TRIAL ADVOCACY (NITA, 4th ed., 2016).**



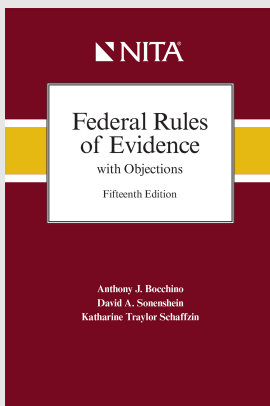
Note: The text contains citations to supplemental materials in the **Visuals Appendix**, including video demonstrations of core concepts discussed in the text. You can find the materials online at <http://bit.ly/1FSfRXv>. The password is **NITAModTriAd5**. You are responsible for reviewing the supplemental materials whenever your required weekly reading cites to the Visuals Appendix.

Anthony J. Bocchino & Donald J. Beskind, **PROBLEMS IN TRIAL ADVOCACY (NITA 2021).**



Note: We will be using the problems in the 2021 edition of the text. You may also use the 2019 edition for class. If you are using the 2019 edition, please add +2 to all dates. However, the problems in the new edition differ significantly from the pre-2019 versions of the same problems. As a result, if you are using an edition older than the 2019 one (not recommended), please be sure to check the facts against the current edition.

Anthony J. Bocchino et al., **FEDERAL RULES OF EVIDENCE**



Note: You are required to have a copy of the Federal Rules of Evidence with you at every class, although not necessarily the two texts recommended here: **FEDERAL RULES OF EVIDENCE WITH OBJECTIONS (NITA, 15th ed., 2020)** or **A PRACTICAL GUIDE TO FEDERAL EVIDENCE: OBJECTIONS, RESPONSES, RULES, AND PRACTICE COMMENTARY (NITA, 14th ed., 2020)**. They are similar and each contains the text of the rules; so, if you choose to buy one, it is unnecessary to buy the other. The texts are recommended because they address how the Federal Rules of Evidence play out in the form of objections and responses at trial.

COURSE MANAGEMENT SITE

Course materials, assignments, and announcements will be posted on TWEN. Please search for and add Trial Advocacy | Section 1 | Fall 2023. **The password for the course is HeinrichFall2023Section1.** All assignments for this course must be submitted using TWEN's Dropbox. All electronic correspondence with the class will be conducted through TWEN as well. As a result, please be sure to enter your e-mail correctly when registering for our TWEN page.

COURSE DESCRIPTION

Trial Advocacy is a semester-long, three-credit course, designed to develop your competence and confidence in court. The goal of the course is to build foundational trial skills through a combination of readings, lectures, classroom demonstrations, and performance exercises that simulate trial practice. The course is performance-based. Preparation, performance, and feedback are at its core.

COURSE OBJECTIVES

The course has three main objectives:

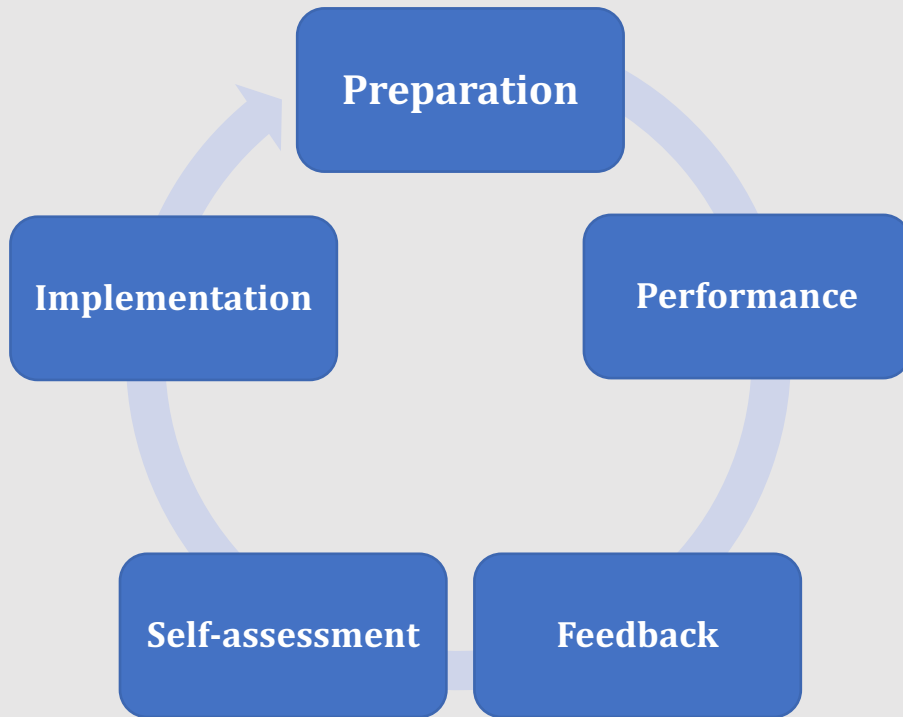
- (1) to achieve trial skills competency;
- (2) to develop confidence in performing these skills in a courtroom; and
- (3) to place the law of evidence in a contextualized setting.

LEARNING OUTCOMES

By the end of the semester, students should be able to:

- ✓ analyze a case;
- ✓ develop and implement case theories and themes;
- ✓ prepare witnesses for trial;
- ✓ present effective opening statements;
- ✓ conduct direct and cross examinations of both lay and expert witnesses;
- ✓ anticipate and address evidentiary issues;
- ✓ deliver compelling closing arguments;
- ✓ demonstrate an understanding of courtroom decorum and proper courtroom demeanor.

THE LEARNING LOOP IN TRIAL ADVOCACY



PREPARATION

Just as preparation is essential for trial lawyers, so is class preparation essential for you. In accordance with ABA requirements, students are expected to spend at least two hours and ten minutes of class preparation for every credit hour of class time; that is, six and one-half hours outside of class for a three-credit course. Your preparation for each class session should include reviewing the assigned reading and your class notes from the previous week, practicing the weekly trial skill(s) as many times as useful, and preparing to make and respond to objections. Your preparation should also include critically reading the assigned weekly material.

PARTICIPATION

Class participation is mandatory. You are not allowed to “pass” as a lawyer, and you are not allowed to “pass” or decline to participate as a student in this course. Abiding by this rule means you must come to class—every class—prepared to perform the assigned performance exercise for the week.

PERFORMANCE

The performance exercises are the most important component of this course because they allow you to engage in practicing the weekly trial skill(s). Your performance includes three separate roles: (1) counsel; (2) opposing counsel; and (3) a witness.

Counsel

Each of you will assume the role of counsel every week. You may be asked to perform for a few minutes only, with the next counsel in line picking up where you left off, or you may be asked to perform the exercise in its entirety. During the performance exercises of particularly challenging skills, you may also be asked to repeat the performance following and implementing my feedback.

Opposing Counsel

We will follow the “**all object**” rule. Anyone except the witness may object. Unless instructed otherwise, you should object whenever an objectionable statement is made during opening statements and closing arguments, whenever an objectionable question is asked, or whenever an objectionable answer is given by a witness, even if you would forego the objection as a strategic matter in a real trial.

Witness

You will act as witnesses for each other for those performing exercises that require a witness. Serving as a witness is not only administratively useful, but also instructive with respect to the skill(s) being taught; the witness’s perspective will give you an invaluable insight into trial advocacy techniques. I have three simple rules for students acting as witnesses: (1) know the facts; (2) get into the witness role; and (3) be realistic.



Question: What does it mean to object even if we would forgo the objection at trial?

Answer: For example, you should object to “hearsay,” even if you know one of the exceptions to hearsay likely applies.

Question: What is the purpose behind this rule?

Answer: The purpose of the “all object” rule is to develop the objecting student’s “ear” and teach the performing student to think on their feet while retaining poise and composure when responding to objections.

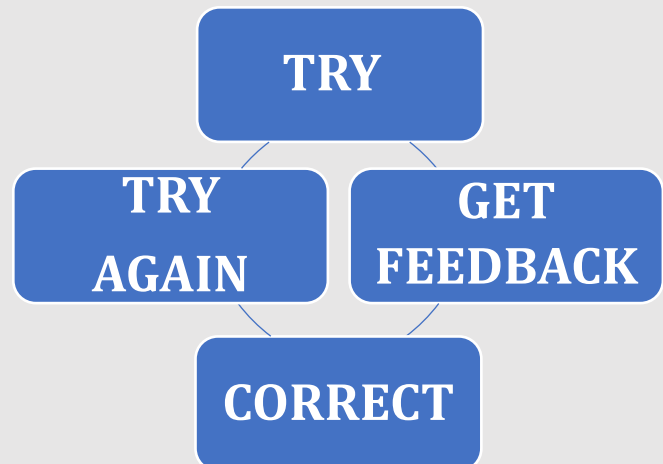
FEEDBACK



WHY IT MATTERS: Feedback is a critical component of effective teaching and learning. Feedback is also an essential element of law practice. A law office with multiple lawyers, for instance, will have many opportunities for you to seek, give, and receive feedback. Learning how to accept, process, and implement constructive feedback effectively is, therefore, a key practice skill that will serve you well in your legal career.

Research shows that feedback can significantly enhance student learning when it is:

- ✓ **Prompt:** follows your performance;
- ✓ **Specific:** provides supporting details;
- ✓ **Positive:** lets you know what you are doing well; and
- ✓ **Corrective:** identifies areas for improvement and offers specific strategies to improve them.



As a result, constructive feedback will follow each performance, so that both you and your colleagues can learn from the experience and develop concrete strategies to improve your performance in the future. Timely, meaningful, and frequent feedback, along with ample opportunities for responsive and reflective practice, are key components of this course.

SELF-ASSESSMENT



WHAT IT MEANS:

A systemic process of data-driven self-reflection. It occurs when you evaluate your performance critically in order to identify strengths and deficits and develop a plan for improvement.



WHY IT MATTERS:

Self-assessment promotes reflection, critical thinking, and self-awareness. The ability to self-assess is vital for both law students and lawyers. When students establish goals, identify criteria that will help them achieve those goals, reflect on their learning, and then generate strategies for additional learning, their performance improves.



WHAT ARE ITS BENEFITS:

Research shows that the ability to successfully self-assess:

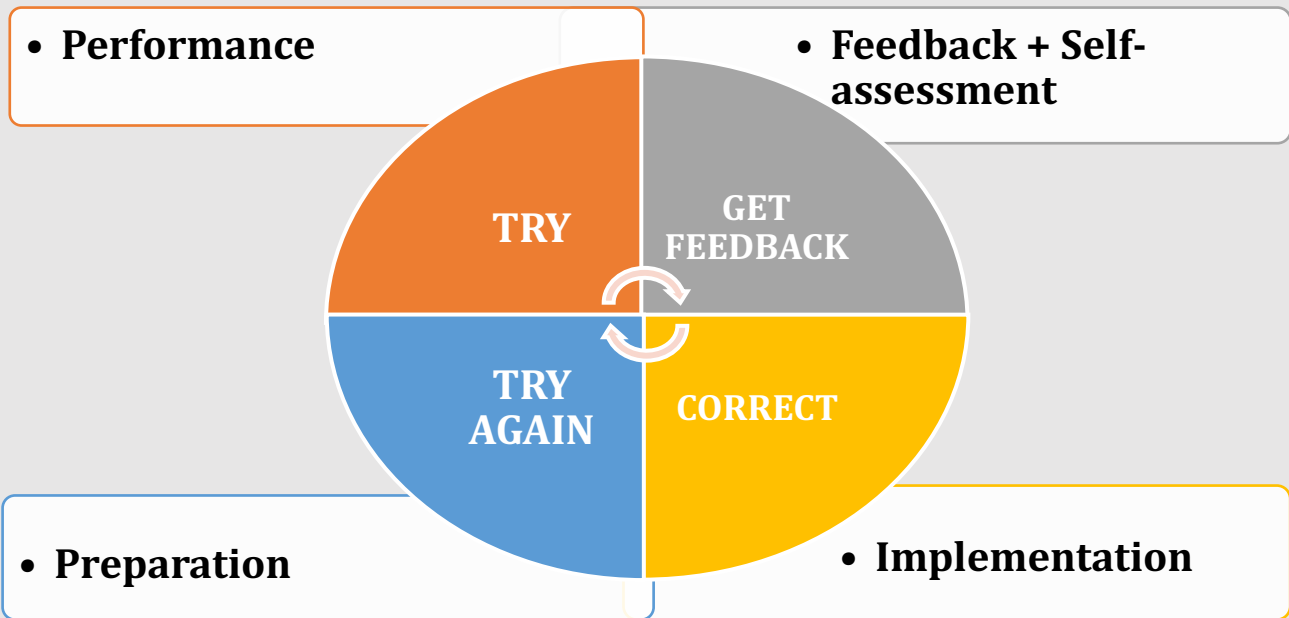
- *enhances learning;
- *increases motivation;
- *improves satisfaction from participating in a collaborative learning environment;
- *provides a range of personal and transferrable skills that will meet the expectations of future employers;
- *empowers and prepares you for lifelong learning.



WHAT IT MEANS FOR YOU:

Your performances will be recorded. After each recording session, you will review the recording, keeping in mind the feedback you received in class, and self-reflect on your performance. A self-assessment worksheet will be provided to help focus your self-reflections and guide your strategies for implementing both my and your own feedback on your performance.

IMPLEMENTATION



CLOSING THE LEARNING LOOP: DELIBERATE PRACTICE

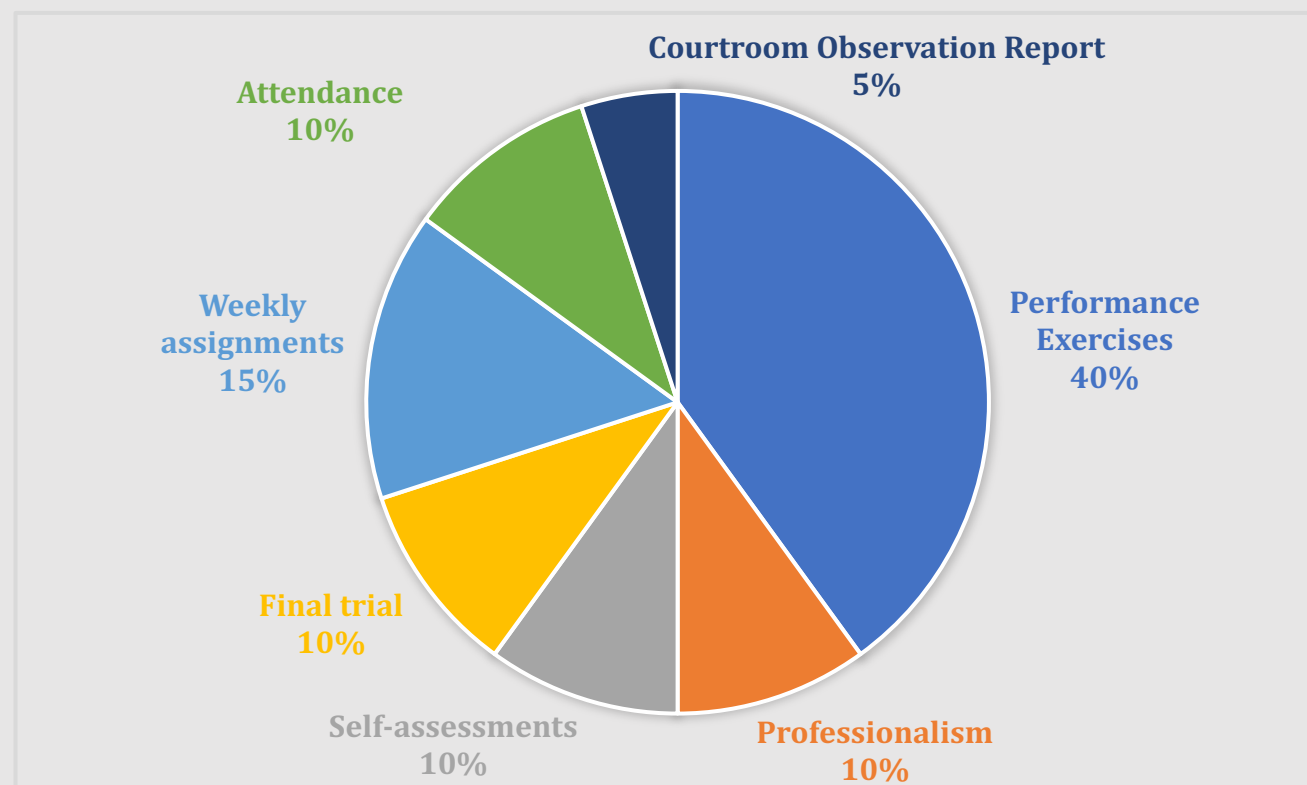
To enhance learning and improve performance, the learning loop includes opportunities for corrected repetition—opportunities to implement the feedback through practice. But true improvement requires more than just practice (the amount of time spent on a task); it requires deliberate practice. Deliberate practice is a highly structured form of practice that is purposefully aimed at learning a skill or improving a specific aspect of performance.

DELIBERATE PRACTICE REQUIRES:

- ✓ A clearly defined goal that identifies the specific skill to be learned or the targeted aspect of performance to be improved upon;
- ✓ Complete concentration and full effort toward learning or improving the identified skill or aspect of performance;
- ✓ An informative and immediate feedback that may come from another or be self-directed; and
- ✓ Repetition that is focused, responsive, and reflective.

GRADING

This course is graded on a “Satisfactory” and “Unsatisfactory” basis. To receive a “Satisfactory” grade, students must complete **all** requirements outlined in the “Weekly Assignments” document. In determining each student’s grade, the following aspects will be considered:



CLASS ATTENDANCE

Class attendance is mandatory. This is a small class with limited enrollment, and I expect you to want to attend it. Each student will be required to perform each exercise every week; thus, any absence from class will adversely affect the development of your trial advocacy skills. These skills cannot be learned by studying at the end of the semester. As a result, you are permitted only **one** absence from regularly scheduled class time. Missing more than one class will result in a failing grade. I have the discretion to allow additional exceptions to the absence policy but only in extraordinary circumstances. You must keep track of your own attendance, and you will not be given a warning that you have one absence and that no more are permitted. **This provision of the syllabus constitutes your warning.**

I start class promptly at 4:00 p.m. Barring mitigating circumstances, I reserve the right to mark a student as absent if the student is late for class, is unprepared when called upon, has failed to submit the weekly assignment(s) on TWEN by the deadline, or leaves class early.

WEEKLY ASSIGNMENTS

To participate in the performance exercise for the week, you must submit your assignment (opening statement, direct examinations, etc.) through TWEN's Dropbox **by 1:00 p.m. on the day of class (Tuesday)**, as LastName_FirstName_PerformanceExerciseTopic. Please include your name on the actual document as well.

FINAL TRIALS

The final trials will serve as the final examination for the course. All students (in teams of two) are required to participate in a final trial and are further required to provide **both** the witnesses and jurors for the trial. Each trial will take approximately four hours.

SELF-ASSESSMENTS

After each recording session, you will review your performance and complete a self-assessment worksheet. The worksheet is available on TWEN under "Self-Assessment Worksheet." Please submit the completed self-assessment worksheet through TWEN's Dropbox by **1:00 p.m. on the Tuesday following the recorded session**, as LastName_FirstName_SelfAssessmentTopic. Deadlines are provided on TWEN.

PROFESSIONALISM

As future attorneys, I expect you to conduct yourselves both in and outside of class in a professional and civil manner. Professionalism includes behaving in a courteous manner towards law school classmates, staff, faculty, and guests. Excessive talking or other distracting behavior during class is considered unprofessional. Unprofessional behavior during your colleagues' performances, such as talking, checking your phone, or leaving the classroom, will result in being asked to leave class and counted as absent.

COURTROOM OBSERVATION

You must observe at least two hours of trial proceedings. Observing an actual jury trial will help you see in person the art of advocacy; the interplay between lawyers, judge, and jury; and the practical use of objections and exhibits. You can fulfill this requirement in any state, federal, or tribal court in North Dakota or Minnesota. Following the trial observation, you will be expected to submit a courtroom observation report. More information about the report is available on TWEN under "Assignments."



TECHNOLOGY POLICY

Cell phones, watches, tablets, and laptops: The use of smartphones, smartwatches, tablets, and laptops is prohibited during class. You may, however, use tablets or laptops for the final trials.

Recording prohibited: No student may record via any medium any class without advance written permission from me. I will consider reasonable requests to record any class. In the event permission to record is granted, the recording is for the sole use of the student to whom permission is granted; no reproduction or distribution is permitted.



SOCIAL MEDIA POLICY

I cannot accept Facebook, Instagram, LinkedIn, or other social networking requests from current University of North Dakota School of Law students. This policy has been put in place to ensure fair treatment to all students.



SPECIAL ACCOMMODATIONS

Please contact [UND's Accessibility for Students](#) if you have a physical or learning disability that needs to be accommodated. For more information on the general process for seeking classroom and other accommodations, please refer to [University of North Dakota Policy Manual IV.A](#).

This syllabus and other class materials are available in alternative formats upon request.